IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 10436 of 2004 (P)

PETITIONER:

C.J.MATHEW, CHAKALAKAL, SEBSON APARTMENTS,
PRATHIBHA BYLANE, PADIVATTOM
EDAPALLY.P.O.

BY ADV. SRI.P.R.VENKETESH

RESPONDENTS:
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1. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.

2. THE SPECIAL SALE OFFICER, THE PAMPADY
SERVICE CO-OPERATIVE BANK GROUP, OFFICE OF THE
ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (C)
KOTTAYAM.

3. ATHIRAMPUZHA REGIONAL SERVICE
CO-OPERATIVE BANK LIMITED, ATHIRAMPUZHA
REPRESENTED BY ITS SECRETARY,ATHIRAMPUZHA, KOTTAYAM..

4. JAMES MATHEW, CHAKALAKAL, PADINJARU
BHAGAM KARA, ATHIRAMPUZHA VILLAGE, KOTTAYAM.

R,R3 BY ADV. SRI.T.R.RAMACHANDRAN NAIR
R4,R4 BY ADV. SRI.K.G.UNNIKRISHNAN NAIR
R,R3 BY ADV. SRI.V.G.ARUN
R,R3 BY ADV. SRI.T.R.HARIKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.10436/04

PETITIONER'S EXTS:

EXT.P1: COPY OF DOCUMENT NO.1997/1970 DT.30.6.1970 EXECUTED WITH THE BANK.

EXT.P2: COPY OF REPRESENTATION DT.11.8.1987 ADDRESSED TO THE ARBITRATOR BY THE PETITIONER.

EXT.P3: COPY OF REPRESENTATION TO THE REGISTRAR OF CO-OPERATIVE SOCIETIES DT.26.12.1987 BY THE PETITIONER.

EXT.P4: COPY OF REPRESENTATION DT.19.12.2000 FILED BEFORE THE REGISTRAR OR CO-OPERATIVE SOCIETIES BY THE PETITIONER.

EXT.P5 SERIES: COPY OF NOTICE ISSUED BY THE 2ND RESPONDENT ON 29.3.04.

RESPONDENTS" EXTS:

EXT.R3(A): COPY OF REPLY SENT BY THE BANK TO THE PETITIONER DT.30.11.2000.

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K.NARENDRAN, J

W.P.(C)No.10436 Of 2004

DATED THIS THE 21st DAY OF JULY, 2015

JUDGMENT

The petitioner is the brother of the 4th respondent, who was the former Secretary of the 3rd respondent Bank. On the allegation of misappropriation of funds, disciplinary proceedings were initiated against the 4th respondent, which culminated in his dismissal from service. For recovering the amount due from the 4th respondent, the 3rd respondent-Bank initiated arbitration proceedings, which culminated in the award passed by the Arbitrator.

2. Going by the provisions under the Kerala Co-operative Societies Act and the Rules made thereunder, an award passed by the Arbitrator in exercise of its powers under Section 69(1) (h) read with Section 70(6) is appealable before the Tribunal under Clause (e) of sub-section (i) of Section 82 of the Act.

3. From the pleadings and materials on record, it is seen that when recovery proceedings were initiated against the 4th respondent for recovering the amount covered by the award passed by the Arbitrator, notices in Form No.8 were issued for proceeding

against the property originally offered as security in the bond furnished by the late father of the petitioner and the 4th respondent, for an amount of ₹10,000/-. Ext.P5 series are the notices issued by the 2nd respondent, who is the Special Sale Officer appointed by the 3rd respondent-Bank. It was in such circumstances, the petitioner moved Ext.P4 representation before the Registrar of Co-operative Societies and thereafter moved this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P5 series of notices and seeking a writ of mandamus commanding the 1st respondent to consider and pass appropriate orders on Ext.P4 representation treating it as a revision under Section 87 of the Act.

4. By order dated 25.3.2004, this Court granted an interim order of stay as prayed for. However, it was made clear that the said order will not stand in the way of respondents 1 to 3 proceeding against the 4th respondent. Later, the said order was modified by order dated 26.2.2004 and permitted to be continued for a further period of three months on condition that the petitioner deposits an amount of ₹10,000/- on or before

15.6.2005, another ₹10,000/- on or before 15.7.2005 and a further sum of ₹10,000/- on or before 15.8.2005. The learned counsel for the petitioner would fairly concede that the petitioner has not fully complied with the above order passed by this Court. Later, by order dated 23.11.2005, this Court directed that the interim order will continue until further orders, on the petitioner remitting at the rate of ₹10,000/- per month payable before the 15th of every month, commencing from December, 2005.

5. A counter affidavit has been filed on behalf of the 3rd respondent contending, inter alia, that it is based on an award passed by the Arbitrator, Ext.P5 series of notices proclaiming sale of the properties in execution was issued. As per the award referred to above, the 3rd respondent Bank was allowed to realise the amount in question by sale of the properties said to be proceeded in Ext.P5 series of notices. Originally, the proceedings were initiated against the father of the petitioner and the 4th respondent. On the death of the father, some of his legal heirs including the petitioner were impleaded and the award was passed with notice to the petitioner as well. The 3rd respondent

has also stated that Ext.P4 representation filed by the petitioner under Section 87 of the Act cannot be entertained, since the proceedings initiated based on Ext.P5 series of notices are pursuant to an award passed under Section 69 read with Section 70 of the Act.

6. The sole issue that arises for consideration in this Writ Petition is as to whether the petitioner can challenge Ext.P5 series of notices issued by the Special Sale Officer appointed by the 3rd respondent, even without challenging the award passed by the Arbitrator in exercise of his power under the Act.

7. Admittedly, the 4th respondent who is none other than the brother of the petitioner was placed under suspension while working as Secretary of the 3rd respondent-Bank on the allegation of misappropriation of funds. Disciplinary proceedings were initiated against him, which culminated in an order of dismissal from service. For realising the amount due from the 4th respondent, the 3rd respondent Bank initiated arbitration proceedings, which culminated in the award passed by the Arbitrator. The pleadings on record make it explicitly clear that,

initially, the late father of the petitioner and the 4th respondent was made party to the arbitration proceedings, since he has executed a bond at the time of appointment of the 4th respondent, by offering the property in question as security. On the death of their father, the petitioner herein and other legal heirs were impleaded as additional respondents and with notice to them, the arbitrator proceeded with the matter and passed awards in favour of the 3rd respondent Bank. It is for executing that award, execution proceedings were initiated, which resulted in Ext.P5 series of notices issued by the 2nd respondent Special Sale Officer. Going by the mandate under the Act, if a person is aggrieved by an order passed by the Arbitrator, the remedy open to him is to file an appeal before the Tribunal in terms of Section 82(1)(b) of the Act. The time limit prescribed for filing such an appeal is 60 days from the date of such decision/award as the case may be. Instead of filing a statutory appeal under Section 82(1)(b) of the Act either by the petitioner or the 4th respondent, the petitioner herein opted for a revision before the Registrar of Co-operative Societies and the 1st respondent herein under

Section 87 of the Act. A plain reading of Section 87 of the Act makes it explicitly clear that the power of revision to the Registrar or the Government under Section 87 can be exercised only in respect of matters which do not fall within the scope of an appealable order before the Tribunal as provided under Section 82 of the Act. As I have already noticed, the award passed by the Arbitrator under Section 70 is an appealable order before the Tribunal under Section 82(1)(B) of the Act. Therefore, in respect of a subject matter which is appealable before the Tribunal no revision under Section 87 can be entertained by the 1st respondent.

8. Though the learned counsel for the petitioner would contend that the petitioner was not made a party before the Arbitration proceedings, the specific stand taken by the learned Standing Counsel for the 3rd respondent is that after the death of their late father, the petitioner and other legal heirs were impleaded as additional respondents before the Arbitrator. Even otherwise, going by the provisions under Rules 82 and 83 of the Rules, even a 3rd party to the proceedings can file an application

to set aside the sale either on deposit of the amount involved or on the ground of irregularity or fraud. Going by Rule 82, an application to set aside sale can be made on depositing with the Registrar, the sum equal to 5% of the purchase money and further sum for payment to the decree holder towards the amount of arrears specified in the proclamation of sale. Going by sub-rule (2) of Rule 82, if such application has been made within a period of 30 days from the date of sale, the Registrar shall pass orders setting aside the sale and shall repay to the purchaser the purchase money together with 5% deposited by the applicant. As far as the provisions under Rule 83 is concerned, three also an application under the said Rule can be entertained within a period of 30 days from the date of sale of the immovable property. But such an application can be made only on the ground of irregularity or fraud. A combined reading of Rules 82 and 83 of the Rules make it clear that two options are available to a party to seek an order to set aside the sale; either by depositing the amount of arrears together with 5%, under Rule 82 or filing an application within a period of 30 days in case he has got a specific case that the sale is vitiated by any irregularity or fraud.

9. In the case on hand, it is not in dispute that the award passed by the Arbitrator is an appealable order against which the parties to the award can file an appeal before the Tribunal. Neither the petitioner nor the 4th respondent has chosen to avail that remedy. If the petitioner has got a case that he is not a party to the proceedings before the Arbitrator, he has the option to move an application under Rules 82 and 83 within the time limit prescribed therein, since an application under the aforesaid Rules can even be made by a third party. Admittedly, the petitioner has not chosen to avail any such statutory remedy. Instead, he approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P5 series of demand notices and seeking a writ of mandamus commanding the 1st respondent to consider and pass appropriate orders on Ext.P4 representation treating it as one filed under Rule 82 of the Rules.

10. As I have already noticed, the 1st respondent is not having any revisional power on a matter which is falling within the scope of an appealable order under Section 82 of the Act.

Therefore, the writ of mandamus sought to dispose of Ext.P4 representation by treating it as a revision cannot be granted. As regards the first prayer, namely, a writ of certiorari to quash Ext.P5 series of notices, sought for in the Writ Petition, admittedly, the aforesaid notices are in pursuance of an award passed by the Arbitrator under Sections 69 and 70 of the Act. Without any challenge to the award passed by the Arbitrator, no challenge can be made to Ext.P5 series of notices issued in the execution proceedings. In such circumstances, the challenge against Ext.P5 series of demand notices also fail.

I find absolutely no ground to entertain this Writ Petition. The Writ Petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRAN,
JUDGE

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